

## The Administrative Judiciary: Balancing Public and Private Interests in Administrative Police (A Comparative Study of Iraqi, French, and Egyptian Law)

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### ABSTRACT

Administrative police measures constitute a pivotal tool employed by public authorities to uphold public order. Nonetheless, the exercise of such powers may, in practice, encroach upon the rights and legitimate interests of individuals. This potential conflict necessitates the intervention of the administrative judiciary to mediate and ensure an equitable balance between the general interest in preserving order and the protection of private rights. This study seeks to examine the judicial mechanisms through which such a balance is maintained, with particular emphasis on the role of administrative courts in reviewing administrative police decisions under both ordinary legal conditions and exceptional circumstances. Under normal conditions, the judiciary exercises strict scrutiny over the legality of such measures, assessing their compliance with all constituent legal elements. In contrast, during exceptional circumstances—where the executive branch may be vested with expanded powers to address unforeseen risks—the judiciary evaluates the fulfillment of the conditions required for the application of the exceptional circumstances doctrine, as well as the proportionality and suitability of the measures adopted by the administration. Adopting a comparative analytical methodology, this research analyzes the jurisprudence of administrative courts in France, Egypt, and Iraq. Through this comparative lens, the study aims to uncover how different legal systems approach the delicate task of balancing the powers of the administration against the guarantees afforded to individuals, particularly within the framework of administrative police authority. Ultimately, the study underscores the importance of judicial oversight in preventing the misuse of administrative police powers as an arbitrary tool that may infringe upon fundamental rights.

**Keywords:** Administrative Police, Balance of interests, Judicial control, Public order, Individual interests.

### INTRODUCTION

Administrative police represents a fundamental mechanism through which the administration seeks to preserve public order in all its dimensions. It grants public authorities broad regulatory powers aimed at maintaining safety, stability, and societal cohesion. However, these powers are not absolute; they are subject to the overarching principle of legality and must be exercised within clearly defined legal limits. The delegation of responsibility for ensuring public order cannot justify infringements upon individual rights and private interests.

This tension between administrative authority and individual guarantees highlights the need to examine how a fair balance can be achieved between competing interests: on one hand, the public interest in securing order, and on the other, the protection of personal rights and freedoms within the framework of administrative police measures. Accordingly, this research explores the extent to which such a balance is attainable, relying on the legal

foundations that govern administrative policing powers and the role of the administrative judiciary in monitoring their exercise.

The study further examines the practical and legal challenges that may hinder this balancing process, particularly the risk of undermining administrative efficiency while safeguarding individual rights. Through an analytical review of judicial rulings and doctrinal developments, the research emphasizes the role of the administrative judiciary in ensuring proportionality and legality in the implementation of administrative police measures.

For purposes of analytical clarity, the research is structured in two main parts: the first chapter addresses the role of the administrative judiciary in achieving balance under normal circumstances, while the second chapter is devoted to the same role during exceptional situations, where broader executive powers come into play.

### **The Role of the Administrative Judiciary in Creating Balance in Normal Circumstances**

Administrative Police is an important tool through which the administration can maintain public order by taking the necessary measures. However, these measures may lead to infringement of private rights and interests. Therefore, taking Administrative Police measures must be subject to legal controls as an important guarantee to achieve a balance between the public and private interest. The administrative judiciary plays a significant role in monitoring Administrative Police procedures to ensure respect for the principle of legitimacy and avoid the abuse of power. Therefore, through this chapter, we will review the role of the administrative judiciary in achieving this balance, as we will address the importance of adhering to the principle of legitimacy in Administrative Police measures under normal circumstances and the administrative judiciary's oversight of the elements of the control resolution under such circumstances.

#### **Adherence to the Principle of Legitimacy**

The principle of legitimacy requires that persons and authorities be subject to the rule of law, including Administrative Police bodies. The administrative judge makes every effort to ensure that they are subject to the principle of legitimacy and that their work is consistent with the law, such that they are issued by a person authorized to issue them in accordance with legal formalities and procedures, and that they are based on a justifying reason, are directed to a legitimate purpose, and aim to achieve the public interest. Given the multiple aspects of the administration's activity, its conflict with individuals in the field of Administrative Police, and the having its privileges, the possibility of its deviation from the principle of legitimacy, as the absence of strict administrative rules that regulate the use of force may lead to the recurrence of incidents of excessive use of force against citizens, which reveals a fundamental imbalance between maintaining public order and protecting individual rights. This shows the urgent need for administrative reform based on social justice and institutional accountability<sup>1</sup>, with the necessity of subjecting Police actions to the supervision of the administrative judiciary to ensure their legitimacy to protect private rights and interests. The administrative judge monitors the legitimacy of the Police resolution and the extent to which the administration adheres to the limits of the law, and decides the Administrative Police actions to achieve a balance between conflicting interests so that the pretext of maintaining public order does not turn into an abuse of power that affects the freedoms and interests of individuals<sup>2</sup>.

The role of the administrative judiciary in creating a balance between interests in resolutions related to Administrative Police based on the principle of legitimacy is clearly evident in a resolution of the Egyptian Administrative Court, which ruled: "Whereas the Supreme Constitutional Court ruled in its ruling promulgated on 04 Nov. 2000 in Constitutional Case No. 243 of 21 L that Articles 8 and 11 of Passport Law 97 of 1959 are unconstitutional of what includes in authorizing the Minister of Interior to determine the conditions for granting, refusing, renewing, or withdrawing a passport after it has been granted... it is inescapable that there is no alternative to applying the judiciary of legitimacy to resolutions issued to banning travel, to fill this legislative vacuum and exercise the role of the administrative judiciary in preserving and protecting public rights and freedoms, achieving the desired balance between the interests of individuals and the public interest of the group...and whereas what was presented in the case instrument, which the plaintiff did not deny or provide evidence to the contrary, that the plaintiff is a professional in transporting Egyptian young people abroad by illegal means and has been previously arrested for this reason more than once, and that in allowing him to travel abroad poses a danger, as he meets with his associates to arrange smuggling operations for Egyptian young people to European countries.

<sup>1</sup>. Ty Price Dooley, *The Undelivered Dream: Policing, Administrative Rules and Social Equity*, *Administrative Theory & Praxis*, vol. 43, no. 4, 2021, p. 294, indexed in Scopus: <https://www.scopus.com/sourceid/21100887531>. DOI: 10.1080/10841806.2021.1959166 (<http://dx.doi.org/10.1080/10841806.2021.1959166>).

<sup>2</sup>. Qarrouf Jamal, *Judicial Oversight of Administrative Police Acts*, Master's Thesis submitted to the Faculty of Law, University of Badji Mokhtar, Algeria, 2006, p. 24.

Therefore, given the foregoing, the court finds that the plaintiff poses a criminal danger that requires restricting his right to travel and move abroad, as this represents a serious harm to the public interest.<sup>3</sup>

By virtue of this resolution, the court clarified the unconstitutionality of the absolute mandate given to the Minister of Interior to prevent individuals from traveling without specific legal provisions, which strengthens its role in protecting private interests from administrative arbitrariness. Conversely, the court upheld the decision to prevent the plaintiff from traveling to protect the public interest, as the same constituted a criminal threat. The travel ban resolution was based on an individual case that constituted an actual threat to the public interest, which does not make it an arbitrary resolution, given the proven danger posed by the plaintiff. This reflects the role of the administrative judiciary as a receiver of legitimacy and clarifies its important role in achieving the balance between interests that it seeks to achieve. The absolute mandate given to the Minister of Interior to prevent travel was annulled to protect the interests of individuals, while the resolution to prevent the plaintiff from traveling was retained, given the threat it poses to the public interest.

The role of the administrative judiciary in balancing interests is also evident in a resolution by the Iraqi Administrative Judiciary Court, which overturned a decision banning the plaintiff from traveling outside Iraq on the grounds that the plaintiff had lost vehicles previously in his possession, belonging to the administrative authority, and that there were investigative cases related to this matter. The court, in overturning the travel ban, relied on the fact that these cases were still under investigation<sup>4</sup>.

The Administrative Judiciary Court, based on the principle of legitimacy, balanced the interests of the individual and the interests of the administration. The plaintiff has the right to freedom of movement, a fundamental right that cannot be restricted based on the existence of unresolved investigations. Innocence is presumed until proven guilty. The ban resolution was not based on a final judicial ruling or conviction, but rather on ongoing investigations and is considered premature. The plaintiff's right to travel cannot be restricted unless there is strong evidence of his escape. The court also balanced the administration's interest in preserving public funds, such as the vehicles under investigation, and favored freedom of movement, since achieving the public interest does not justify depriving the plaintiff in advance of his right to travel without relying on a judicial conviction.

### **Judicial Oversight of the Elements of the Police Resolution in Normal Circumstances**

The administrative judge decides the Administrative Police resolution on the scales of the law, ensuring their compliance with legal rules to protect the rights and interests of individuals, given that Administrative Police resolutions may affect those rights and interests, diminishing or limiting the same. The administrative judge monitors the external legitimacy of Police resolutions and ensures the extent to which the Police resolutions comply with the rules of jurisdiction. It also distinguishes between the Essential and non-essential forms to which the administration must adhere.

As according to the principle of legitimacy, the administration must be subject to the law by respecting the formal rules and procedures established by law in a way that achieves the interest of the administration itself and individuals<sup>5</sup>.

In addition, the administrative judge monitors the internal legitimacy of Police resolutions. Such judge examines the reason cited by the Police body to ensure its legitimacy and monitors its proper application of the law and the absence of deviation in the use of power. Furthermore, every Police resolution must aim to preserve public order in order to be within the limits of the principle of legitimacy<sup>6</sup>.

However, the external elements of legitimacy of the administrative resolution do not raise a problem in the field of oversight of Administrative Police, since a violation of the elements of form and jurisdiction is considered a public error by the administration, as it cannot claim to possess discretionary power in these two elements. Therefore, it is easy for the administrative judge to consider the same and rule to invalidate the same. What constitutes importance in the field of this oversight are the elements of internal legitimacy represented by the reason and purpose. Administrative Police bodies may not take into account the reason for the Police decision when exercising their powers, or they may deviate from their specific purpose, which is to preserve public order. Therefore, it can be said that judicial oversight of Administrative Police decisions shows its importance in oversight of the elements of reason and purpose.

### **Oversight of the Purpose Element**

<sup>3</sup>. Ruling of the Egyptian Administrative Court No. 182, Case No. 24796 of the 57 L., dated 13 April 2004, Dr. Ashraf Ibrahim Suleiman, Investigations and Judicial Oversight in Comparative Systems, 1<sup>st</sup> ed., National Center for Legal Publications, Cairo 2015, p. 147

<sup>4</sup>. Administrative Judiciary Court Decision No. 81 Administrative Judiciary of 1/18/2006, Kalrazaan Sadr al-Din Ahmed, The Role of Administrative disciplinary Authorities in Restricting Public Freedoms, PhD thesis submitted to the College of Law, Tikrit University, 2019, p. 85

<sup>5</sup>. Khaled Al-Zubaidi, Negative Administrative Decision in Jurisprudence and the Judiciary, Journal of Law, Kuwait University, Issue , 30 September 2006, p. 351

<sup>6</sup> Dr. Amar Boudiaf, A Concise Guide to Administrative Law, Dar Rayhana, Algeria, no year of publication, p. 208

Achieving public order within society is the responsibility of administrative control bodies. The goal of control decisions must be to preserve public order with its various elements. Control decisions are considered illegitimate and tainted by a defective goal or a defective use of power if they do not aim to preserve public order or if they deviate from the goal specified for them by law<sup>7</sup>.

The administration is committed to preserving public order as a general purpose when exercising Administrative Police measures. However, a specific purpose may be specified for the Administrative Police authority in accordance with the rule of allocating purposes. It is not entitled to achieve a purpose other than that specified for it, even if it is within the framework of the public interest. If the administration is granted the power to seize certain places with the aim of allocating the same to shelter homeless families, the administration is not entitled to use the power of Police.

It is granted only to achieve the purpose for which it was specified and nothing else<sup>8</sup>. Therefore, the administration's purpose when resorting to the Police procedure must be to achieve public order or achieve the legally specified purpose and nothing else.

However, defining the concept of public order is difficult, as it is a flexible and relative idea, and the legislator does not address its definition, as it varies according to time and place. The administration may face situations that the legislator did not foresee and did not specify how to confront the same, but it remains responsible for establishing security and putting an end to disturbances. It is responsible for intervening and taking the necessary measures to preserve public order, which is one of its main duties. The lack of precise boundaries for the nature of the concept of public order should not constitute an obstacle to the administration in carrying out its duties imposed on it by law. All of this is within the scope of legitimacy, so that maintaining public order does not become a pretext for infringing on the rights and interests of individuals. Maintaining public order and protecting the freedoms and interests of individuals are both important and should not be neglected. However, the application of one may hinder the application of the other, which requires sacrificing one of them. Hence, the role of the administrative judiciary appears in achieving a process of balance when adjudicating disputes related to Administrative Police<sup>9</sup>.

Among the judicial guarantees that control the balance when taking Administrative Police measures is the task of the administrative judge in determining the content of public order and the concept of the rights and interests of individuals, since the legislator did not address the concept of private interests and the purpose of restricting the same, nor did the judge addresses the concept of public order, which may entail restricting private freedoms and interests. The judge, by virtue of the oversight he exercises over control measures when considering disputes related to it, determines the content of public order and examines the extent of the legitimacy of the measure and whether it was taken to preserve public order. The administrative judge also has another task of preserving the interests of individuals and preventing the abuse of Administrative Police powers. The French administrative judiciary played a significant role in establishing principles governing the relationship between the freedoms and interests of individuals and Administrative Police. Sometimes it defines the concept of public order and sometimes it interprets what is meant by freedoms and interests of individuals according to the solutions required by the dispute. It demonstrated the full ability to assess circumstances and conditions and carried out this task with all skill, and this role resulted in general principles that controlled the relationship between freedoms and interests of individuals and Administrative Police measures<sup>10</sup>.

In support of this, we cite the resolution of the French State Council No. 136727 dated October 27, 1995, which stated:

*The State Council clarifies regarding the legitimacy of the challenged resolution that Article 2-131L states: From the Municipalities Law, it is stated that: "The municipal police aim to ensure public order, safety, security and public health." Whereas the authority vested with municipal police powers has the right to take any measure to prevent disturbances to public order, and respect for human dignity is one of the components of public order, and the authority vested with municipal police powers can, even in the absence of special local circumstances, prohibit any show that constitutes an attack on human dignity. The dwarf-throwing, which involves the public throwing a dwarf, results in the use of a physically disabled person as a projectile, is presented on this basis. Whereas such a statement, by its very nature, is an attack on human dignity, and the authority vested with municipal police powers has the right to prohibit it even in the absence of special local circumstances, even if measures have been taken to ensure the safety of the person concerned, even if this person voluntarily participates in the statement in exchange for a fee. Whereas the Administrative Court of Versailles, when issuing the challenged ruling, relied on the fact that the prohibition of the show was unlawful in the absence of special local*

<sup>7</sup> Dr. Youssef Nasser Muhammad, Administrative Police and the Limits of Its Powers in Normal and Exceptional Circumstances, a study published in Journal of Legal and Economic Research, Issue 74, 2020, p. 1526.

<sup>8</sup> Hashem Abdel Raouf Basyouni, The Theory of Administrative Control Conditions in Contemporary Positive Systems and Islamic Law, Dar Al-Fikr Al-Jami', Egypt, 1<sup>st</sup> ed., 2007, p. 182.

<sup>9</sup> Mahmoud Saad El-Din Sharif, The Body Responsible for Issuing Police Regulations and the Restrictions It Is Subject to in This Regard, State Council, Magazine, Egyptian Universities Publishing House, Egypt, 03, 1952, p. 219

<sup>10</sup> Boukrit Omar, Judicial Oversight of Administrative Control Measures, Master's Thesis submitted to the Faculty of Law and Political Science, University of Mentouri, Constantine, Algeria, 2007, p. 132.

*circumstances, even if the statement was an attack on human dignity, this reasoning is legally incorrect, and the principle of freedom of work, trade and industry does not prevent the authority vested with The municipal police have the power to prohibit any legitimate activity whenever this measure is the only means to prevent a disturbance of public order, and this applies to the incident in dispute due to the nature of the statement in question. Therefore, it was decided to cancel the ruling issued by the Administrative Court in Versailles on February 25, 1992, which cancelled the decision issued on October 25, 1991 by the mayor prohibiting the dwarf throwing statement scheduled to be held on the same day at the Embassy Club<sup>11</sup>.*

Through this ruling, we note the State Council's tendency to expand the concept of public order after it considered the violation of human dignity a disturbance of public order that justifies the intervention of the police authorities. It clarified that the police authorities aim to ensure public order, safety, security and public health, and they have the right to take any measure to prevent the disturbance with the public order.

That respect for human dignity is one of the components of public order, which demonstrates judicial jurisprudence that expands the concept of maintaining public order, which justifies the intervention of Administrative Police authorities.

### Oversight of the Causal Element

Oversight of the Causal Element is represented by oversight of the physical existence of the facts first, and then oversight of their legal characterization. The highest degree of oversight of this element is represented by oversight of suitability.

**Oversight of the Physical Existence of Facts:** The first degree of judicial oversight of the Causal Element, and the minimum level of that oversight, is represented by the administrative judiciary's oversight of the physical existence of the facts on which the administration relied in issuing its decision. The administrative judge verifies the validity of the existence of the factual or legal situation on which the decision was based. If it becomes clear to him that it does not exist, he rules to annul the decision due to the lack of a reason<sup>12</sup>. This is the same whether the administration mistakenly believed that those facts existed, i.e., if it acted in good faith, or if it knew that those facts did not exist. In both cases, the administrative decision is annulled due to the lack of facts<sup>13</sup>.

The reason for the Police decision must be present and existing, and the administration must, when resorting to taking the Police decision, base it on a valid reason that justifies taking that measure, i.e., it must create a sufficient justification for it. The administration's decision to impose a curfew must be based on a valid reason that necessitates its adoption, and the dismissal of security chiefs from their positions must be based on the reasons specified by law. Likewise, the refusal to grant permission to demonstrate must be based on a valid reason, as the right to demonstrate is a constitutionally guaranteed right<sup>14</sup> and may not be infringed upon except for reasons that affect the unity and stability of the country. Likewise, the involuntary detention of a mentally ill person or his compulsory treatment must be based on the existence of a valid reason, which is that the patient poses a danger to society or himself<sup>15</sup>.

The administration's resort to closing shops or restaurants must be based on the existence of a reason that justifies taking that decision, i.e. the material existence of the facts on which the decision is based must be proven.

In support of this, we cite the ruling of the French State Council issued on November 3, 1989, No. 71422, by which it cancelled the decision of the Governor of Paris to close the China Town restaurant for a period of six months, and also cancelled the decision issued by the Minister of the Interior, which extended the closure to one year. The reason for the closure in the two aforementioned decisions was the existence of an investigation into a drug case that revealed that the restaurant's managers were sophisticated in using it as a cover for widespread smuggling operations. However, the French State Council ruled that any document in the file related to the matter does not prove that the restaurant had contributed to committing acts that conflict with public order, public health, or public morals. Since the decisions of the Governor and the Minister were based on the same reasons, the State Council decided to cancel the decision issued by the Governor of Paris on April 24, 1984, and the decision issued by the Minister of the Interior on May 15, 1984, due to the lack of evidence of the material facts on which the two contested decisions were based<sup>16</sup>.

Through the French State Council's ruling above, the importance of judicial oversight of the physical existence of facts becomes clear to us. Administrative authorities do not enjoy absolute discretionary power and must base

<sup>11</sup> State Council, ass., October 27, 1995, No. 136727, published in Lebanon, available [https://conseil-etat.fr/fr/arianeweb/CE/decision/1995-10-sur-Legifrance.27/136727?utm\\_source=chatgpt.com](https://conseil-etat.fr/fr/arianeweb/CE/decision/1995-10-sur-Legifrance.27/136727?utm_source=chatgpt.com). (Consulted on March 23, 2025).

<sup>12</sup> Muhammad al-Saghir, Administrative Judiciary: The Cancellation Suit, Dar al-Ulum for Publishing and Distribution, Algeria, 2004, p. 352.

<sup>13</sup> Shamir Mahmoud Sabry, The Legitimacy of Special Administrative Police to Protect Public Security, Arab Center for Publishing and Distribution, 1<sup>st</sup> edition, Cairo, 2018, p. 151.

<sup>14</sup> Article 38 of the Iraqi Constitution of 2005 states the following: "The state guarantees, without prejudice to public order and morals: Third: - Freedom of assembly and peaceful demonstration, and it shall be regulated by law."

<sup>15</sup> Article 7 of the Mental Health Law No. 1 of 2005 states the following: "Article 7 First - It is not permissible to detain a patient involuntarily or treat him compulsorily unless he poses a danger to himself or to society."

<sup>16</sup> State Council, 3/5 SSR, November 3, 1989, No. 71422, cited in the tables of receipt Lebanon, available on : <https://www.legifrance.gouv.fr/ceta/id/CETATEXT000007764814?dateDecision=&init=true&page=1&query=China+town+&searchField=ALL&tabselection=cetat>. Legifrance (consulted on March 14, 2025).

their decisions on the existence of confirmed and proven facts; otherwise, their decisions would be subject to cancellation by the administrative judge. The Council, by canceling the decision to arbitrarily close the restaurant due to the lack of sufficient evidence to take this measure that affects private interests, clarified the importance of protecting the rights and interests of individuals from administrative arbitrariness, which demonstrates the importance of the judiciary in finding a balance between protecting the public interest and respecting private interests.

The administration's resort to closing the shop must be based on confirmed and proven facts, such as the presence of an imminent danger that necessitates such closure. In confirmation of this, the Egyptian Supreme Administrative Court ruled: "The basis for stopping the management of the shop, in whole or in part, by administrative means, in application of Article 12 of Law No. 453 of 1954 regarding industrial and commercial establishments, is the presence of an imminent danger to public health arising from the management of the shop and as a result of this management. And if the local cultivation of tobacco is considered smuggling according to Article 2 of Law No. 62 of 1964 regarding tobacco smuggling, then the factory owner's commission of this act, even if it is a crime, does not meet with it in.

The existence of an imminent danger to public health or public security justifies the closure of the factory administratively, in application of Article 12 of Law No. 453 of 1954, unless it is proven that this tobacco is being used in the factory in a manner that creates this danger, which is a matter of suspicion and does not create the danger that justifies the closure<sup>17</sup>

The Egyptian Supreme Administrative Court confirmed the necessity of the reason represented by the occurrence of an imminent danger as a justification for the administration to resort to administrative closure and distinguished between the fact that local tobacco cultivation is considered a legal offense and the fact that it constitutes a danger to public order due to the existence of an imminent danger to public health or public security, which requires an Administrative Police procedure. That is, it distinguished between judicial Police, which aims to punish violators of the laws, and Administrative Police, which aims to maintain public order. It also confirmed that the mere existence of assumptions or suspicion does not create the existence of danger, so the existence of an imminent danger is necessary as a justification for issuing a closure decision. All of this is out of the court's keenness to protect the rights and interests of individuals from the arbitrariness of the administration and to enhance the balance between conflicting interests.

Administrative Police decisions related to arrest, which are decisions that directly affect the freedoms and interests of individuals, must be based on real facts, as the person to be arrested poses a danger to security and public order. This was confirmed by the Egyptian Administrative Court in a ruling that stated: "It is evident from the statements that the plaintiff was under arrest during the period from 15 April 1990 until 30 April 2003, the date of his release, as recorded in the plaintiff's document portfolio. The documents were devoid of any definitive evidence justifying this arrest or proving the existence of the fact that could be a reason for it, and the administrative authority did not provide evidence that the plaintiff committed real facts that indicate that he is a suspect or a danger to security and public order. Therefore, the plaintiff's arrest decision was issued without the element of reason, and it has no justification in fact or law, which provides the element of error on the part of the defendant administrative authority<sup>18</sup>.

As for the Iraqi Supreme Administrative Court, in a decision we find its judicial oversight of the material existence of the facts, which stated: "The plaintiff's membership in the Board of Directors of the Silsilat Al-Dhahab Transfer Company is not sufficient in itself to freeze his funds, but rather requires that he commit one of the acts stipulated in Article 10 of the Terrorists' Funds Freezing System No. (5) of 2019.

Especially since the challenged order did not state the reasons, so the court should have brought in the Anti-Money Laundering and Terrorism Financing Office to inquire about the actions committed by the plaintiff that required his inclusion on the lists of terrorist funds frozen. Since the appealed judgment was issued without taking this into account, it was decided to annul it<sup>19</sup>.

The Administrative Court examined the material existence of the facts by confirming that the decision to freeze the plaintiff's funds was based on his committing one of the acts stipulated in the Terrorist Funds Freezing System. It indicated that his mere membership in the company's board of directors is not a reason to freeze his funds unless he commits one of the acts stipulated in Article 10 of the system. This proves the court's oversight

<sup>17</sup> Dr. Muhammad Abd al-Hamid Masoud, Problems of Judicial Oversight of the Legality of Administrative Police Decisions, 1st ed., no publisher or place of publication, 2007, p. 579.

<sup>18</sup> The ruling of the Egyptian Administrative Court issued on 2/24/2009 in case number 3289 for the year 56 Q, Ninth Circuit, and it stated in another decision regarding the importance of the existence of a valid reason for the legitimacy of the administrative Police decision: "Therefore, including the name of Kawa Yassin Salim, The Role of the Administrative Judiciary in Protecting Public Rights and Freedoms, Dar al-Jamia al-Jadida, Alexandria, 2016, (1) (2) p. 131

<sup>19</sup> . Supreme Administrative Court Ruling No. 648 / Administrative Judiciary / Cassation / 2021 dated 1/19/2022. Published in the Collection of State Council Decisions and Fatwas for the year 2022, p. 452. And Supreme Administrative Court Ruling No. 1411 / Administrative Judiciary Cassation / 2018 dated 2/13/2020, published in the Collection of State Council Decisions and Fatwas for the year 2020, p. 438.



of the material existence of the facts, as the court verified the existence and validity of the facts on which the administrative decision was issued, and since their existence was not proven, it decided to annul the contested decision.

**Oversight of the legal characterization of the facts:** When judicially reviewing a defective reason, the administrative judge first confirms the material existence of the facts and then moves to the second stage of reviewing the element of reason. After the administrative judge confirms the material existence of the facts, he moves to reviewing the legal classification of the facts, examining the legitimacy of that classification and the soundness of the legal description. If it is legally correct, the decision is deemed valid; otherwise, it is flawed due to a defective reason<sup>20</sup>

The administrative judiciary exercises oversight over the legal classification of the facts to ensure that the circumstances that prompted the administration to issue its Police decision constitute a breach of public order. The material facts actually existed and are not subject to dispute, but the judge verifies whether those facts are necessary to legitimize the intervention of the Police authorities and are required by law to exercise those Police powers. He also verifies the validity of the legal description added by the Administrative Police authorities to the facts they considered a reason for their Police decisions, and ascertains whether they meet the legal conditions justifying the Administrative Police decisions taken, meaning that their assessment is not personal or subjective, but rather that it achieves the intent intended by the legislator, which is to protect public order<sup>21</sup>.

In support of this, we cite the resolution of the French State Council No. 23NC03556 dated March 27, 2025, which stated that the plaintiff's request to the Administrative Court in Strasbourg to annul the resolution issued by the Barin Prefecture ordering his expulsion from French territory and the withdrawal of his Algerian residence certificate. The Administrative Court rejected his request, basing this on the multiplicity and seriousness of the crimes he committed, as his behavior constitutes a threat to the fundamental interests of the state, which prompted him to file an appeal before the Court of Appeal, which ruled that the Law on the Entry and Residence of Foreigners and the Right to Asylum stipulates that foreigners who have been legally residing for more than 10 years and who have French children enjoy protection against expulsion unless their behavior constitutes a serious threat to the fundamental interests of the state, or their stay constitutes a serious threat to public order, or they are involved in terrorist activities. Moreover, despite the plaintiff's residence for up to 10 years and his paternity of French children, he did not provide sufficient evidence that he actually contributes to the upbringing and care of his children, and that he had previously been convicted 13 times of serious crimes, including violence, theft, drug possession, fraud, and a sentence of He was sentenced to custodial sentences of up to 6 years, so his period of residence was calculated after deducting his prison terms, which constitutes a sound application of the law and prevents him from benefiting from the protection against deportation stipulated in the law. In addition, since he has not been proven to have no ties to his country, Algeria, the decision to deport him does not constitute a disproportionate violation of his right to family life and does not violate the International Convention on Human Rights, which justifies his deportation<sup>22</sup>.

In this decision, the administrative judge monitored the material existence of the facts after verifying the existence of the reasons on which the administration relied when issuing the expulsion decision. It confirmed the existence of a criminal record containing 13 convictions for multiple serious crimes, in addition to the issuance of custodial sentences against him of up to 6 years. It then moved on to monitoring the legal qualification of the facts when it verified the extent to which these facts conformed to the legal provisions. For the plaintiff to enjoy the condition of protection from expulsion stipulated in the law, he must have French children and have been a legal resident for more than 10 years. The court ruled that the plaintiff did not benefit from the protection stipulated against expulsion because he did not actually participate in raising and caring for the children, and the seriousness of his criminal behavior made his stay a serious threat to public order, which provides the exceptions that permit expulsion despite his long residence and his paternity of French children. Thus, the administrative judiciary was able to achieve a balance between conflicting interests, as rights, private interests, such as protection from eviction and the enjoyment of family life, are not absolute. Rather, the public interest may outweigh them when there is a danger that threatens public order and the state's higher interests.

The Egyptian Supreme Administrative Court stated in a decision, "The oversight of the administrative judiciary finds its natural limit in verifying whether the result reached by the decision was derived from existing or non-existent principles, and whether this result was legitimately drawn from principles that produce it materially or legally, since the existence or non-existence of these principles, the soundness or invalidity of the conclusion reached by the decision in these principles, and the validity of the legal classification of the facts, assuming their

<sup>20</sup> Boukrit Omar, et al, p. 114.

<sup>21</sup> . Shamir Mahmoud Sabry, et al, p. 163.

<sup>22</sup> CAA of Nancy, 3rd Chamber, March 27, 2025, No. 23NC03556, published in Lebanon, <https://www.legifrance.gouv.fr/ceta/id/CETATEXT000051408926?dateDecision=&init=true&page=1&query=Qualification+juridique+des+faits&searchField=ALL&tabselection=cetat>. [Consulted on April 1, 2025].

material existence or the invalidity of this classification, all depend on this. The existence or non-existence of the element of reason in the administrative decision and its conformity or non-conformity with the law." <sup>23</sup>

Through this ruling, the court demonstrated the importance of the legal qualification of facts in determining the legitimacy of an administrative decision and ensuring its compliance with the law. After ensuring that the decision is based on correct facts, it resorts to legally qualifying those facts, thus ensuring that the public interest that the administration seeks to achieve through its decisions justifies taking that action, which may be harmful to the interests of individuals. Whenever the court finds that the legal qualification of the decision is incorrect, it considers the decision unlawful and subject to cancellation for not complying with the law, in order to protect the principle of legality, preserve the private interests of individuals, and implement its effective role as a judicial body working to strike a balance between the public interest and private interests.

As for the Iraqi Administrative Judiciary Court, a decision was issued that demonstrates its oversight of the legal qualification of facts:

"The court found that the plaintiff is challenging Ministerial Order No. 816 of 10 July 2024, which includes the supply of animal products from the Kurdistan Region to all governorates, and is requesting its annulment because it is contrary to the law and that this right causes material and moral harm to the rights and interests of producers in the center and south... The court reviewed the letter of the first defendant's department, in addition to his job, which included a note of an increase in the prices of (table eggs) due to the lack of sufficient quantities of it being offered in local markets to cover the demand for it and because there is an abundance in the quantities produced in the Kurdistan Region and the need for it for the purpose of reducing and stabilizing prices. This department proposed suspending the implementation of Cabinet Resolution No. 183 of 2022 insofar as it relates to table eggs.

As well as the approval for companies operating in the Kurdistan Region to transport their shipments from the Kurdistan Region to all Iraqi governorates, and whereas the departments of the defendants, in addition to their position, have committed to determining the production capacity of a number of poultry projects and slaughterhouses in the Kurdistan Region exporting to the rest of the governorates, and whereas the department of the first defendant, in addition to his position, confirmed that there has been an increase in the prices of table eggs due to the lack of sufficient quantities of them in the local markets in a way that covers the demand for them, which requires taking measures to restore stability to the prices of the aforementioned material by allowing the entry of the products of the production companies in the region to the rest of the governorates, and whereas the aforementioned products are among the necessary needs of the citizens and their high prices affect the economic situation and the purchasing power of the family, and whereas one of the most important functions of the government is to maintain the stability of the prices of basic materials, and whereas the local companies operating in the governorates of Iraq except Kurdistan have not provided what supports their ability to meet the need of the local market with sufficient quantities of poultry products in a way that covers the demand for them and achieves stability in their prices, therefore the plaintiff's lawsuit has no legal basis and the matter under appeal is valid and in accordance with the law, therefore the court decided by agreement to rule to dismiss the plaintiff's lawsuit for lack of basis It has the law"<sup>24</sup>

In its above-mentioned decision, the Administrative Court did not limit itself to examining the physical existence of the facts, i.e., ensuring the existence of the reasons that prompted the administration to take its decision. Rather, it extended its oversight to the legal characterization of the facts by verifying whether the contested decision was in accordance with the relevant regulations and laws. This demonstrates the essential role of the Iraqi administrative judiciary in creating a balance between conflicting interests, i.e., the interest of local producers in the central south, who may be harmed by competition with products coming from the Kurdistan region, and the public interest of consumers of animal products, who are in dire need of the availability of these products and the stability of their prices in the markets. We note that the court, through this ruling, weighed the public interest over the private interests of local producers, since price stability is still an important government goal, which justifies allowing the import of these animal products from the region, especially with the clear inability of local producers to meet the market's need for animal products, which leads to an increase in their prices.

**Police of proportionality:** In addition to the physical existence of the facts and their legal classification, the administrative judge monitors the appropriateness of the Police decision. He also monitors the means used during the Police procedures. Administrative Police bodies must adhere to the use of appropriate means, and their decision must be consistent with the circumstances in which it was issued and necessary to maintain public order. The general principle is that judicial oversight of administrative decisions stops at oversight of the physical existence of the facts and their legal classification. The administration has the freedom to assess the importance of the case and the action it takes in response. However, the administrative judiciary has tended to extend its oversight of the appropriateness of these decisions, appreciating the need to preserve private rights and interests that may

<sup>23</sup> Abdul Ghani Bassiouni, *Administrative Judiciary, Cancellation Judiciary, Maaref Establishment*, Alexandria, 1997, p. 252

<sup>24</sup> Administrative Court Decision No. 6328/2024 dated 11/13/2024 (unpublished).



be restricted by Police decisions. Since these decisions affect freedoms and interests, they must be subject to an examination of appropriateness to ensure the extent of the proportionality between the importance and seriousness of the facts. The administrative judge examines the circumstances and context of that procedure in order to ensure that the procedure taken is necessary to achieve the goal, since the necessity of the Police procedure affecting freedoms and interests is an element of legitimacy<sup>25</sup>.

The administrative judiciary's oversight of the reasons for Police decisions includes the necessity and seriousness of the reason. These reasons must also be valid and proportionate to the action taken based on them. Therefore, the administrative judge examines the existence of proportionality between the reason and the subject matter in the Police decision, as he monitors the suitability of the decision taken by the Administrative Police authorities to the circumstances and conditions that prompted it. This suitability is greatly affected by the motive for the decision and the possibility of justifying it<sup>26</sup>.

Within this framework, the French Council of State, in a decision, decided to cancel the decision taken by the mayor to limit the duration of the church bell ringing to three minutes and not to exceed five minutes, since the interest is not commensurate with the harassment caused to citizens<sup>27</sup>. Since church bells have religious and historical significance in French society, the Council of State found that restricting them must be justified and proportionate to what the public interest requires.

Through this ruling, we note that the French administrative judge was not satisfied with the traditional oversight of the causal element in administrative control decisions, which is limited to the physical existence of the facts and their legal classification, but rather went beyond that to include his oversight of the appropriateness of the reason for the control decision. The French State Council was not satisfied with verifying the extent to which the decision was based on a real reason, but rather its oversight extended to include the extent to which the reason was appropriate to the form and the content of the decision.

In addition, the extent of its suitability to the circumstances that prompted the decision, which constitutes an important development in the principle of balancing interests, especially in the field of administrative control, in which maintaining public order is a supreme interest, and the measures taken by the administration to maintain public order may restrict the freedoms and interests of individuals. The French Council of State recognized the importance of achieving proportionality between the administrative control decision and its purpose in the above ruling related to determining the duration of the church bell ringing. It found that regulating the duration of the bell ringing must be proportionate to what the public interest requires, given that the ringing of church bells has religious and historical significance, which embodies the Council's oversight of the suitability of the reason for the administrative measure taken and confirms that examining the legitimacy of the control decision is not limited to the traditional method, but rather extends to verifying the suitability of the reason as part of the requirements of the process of balancing interests carried out by the administrative judiciary between the authorities of the administration and the interests of individuals.

The Egyptian Administrative Court also ruled in this regard, stating in its ruling: "The decisions issued by the Ministry of Health to preserve public health and prevent the emergence and spread of diseases are subject, as administrative, regulatory, and individual police decisions, to the oversight of the court, which has broad authority to investigate their causes and circumstances in order to ensure that they are consistent with the circumstances of the case, that they are necessary and essential for the preservation of public health, and that they are the result of the necessity of protecting this health in the special circumstances for which they were decided. In other words, in this case, the court has the authority to examine the suitability of these decisions to the circumstances and conditions that led to them<sup>28</sup>.

Through this ruling, it becomes clear that the Egyptian administrative judiciary is not satisfied with reviewing the extent of the reason that justifies taking action to preserve public health, but also went to examine the proportionality of the measure taken so that it is not more serious than what is required by necessity, as the administration may not impose restrictions that exceed reasonable limits on the freedoms and interests of individuals under the pretext of protecting public order. There must be controls that allow for the protection of individual interests from the arbitrariness of the administration. Therefore, the administrative judiciary has turned to examining the suitability of the disciplinary decision to the circumstances in which it was issued and ensuring that it is necessary and essential. The decision taken must be the result of necessity to preserve public health, as stated in the above ruling. This reflects the administrative judiciary's keenness to create a balance between the discretionary power of the administration in taking the necessary preventive measure and the rights of individuals

<sup>25</sup> Dr. Sami Gamal El-Din, *The Judiciary of Appropriateness and the Discretionary Power of the Administration*, Dar Al-Nahda Al-Arabiya, Cairo, 1992, p. 218.

<sup>26</sup> Dr. Adel Al-Saeed Muhammad, *The Administrative Police*, ed., Dar Al-Fikr Al-Jami'i, Alexandria, 2008, p. 417.

<sup>27</sup> Hashem Abdel Raouf Bassiouni, *The Theory of Administrative Control Circumstances in Contemporary Positive Systems and Islamic Law*, Dar Al-Fikr Al-Jami'i, Cairo, 1st ed., 2007, p. 182

<sup>28</sup> Egyptian Administrative Court Ruling No. 657 of 6/16/1949, Faisal Jabr Abbas, *Administrative Control in the Scope of Public Health in Iraq*, Master's Thesis Submitted to the College of Law and Political Science, Al-Iraqiya University, 2019, p. 151

affected by the measure taken, thus preventing the administration's arbitrariness in using Administrative Police powers under the pretext of The public interest ensures that administrative intervention is not disrupted whenever necessary, in addition to protecting personal rights and interests.

## THE ROLE OF THE ADMINISTRATIVE JUDICIARY IN CREATING A BALANCE IN EXCEPTIONAL CIRCUMSTANCES

The administration faces unusual repercussions under exceptional circumstances, which necessitates taking exceptional measures to confront them in order to preserve public order. These measures taken by Administrative Police authorities under exceptional circumstances, which are necessary to address the current situation, may be infringing on the freedoms and interests of individuals, which demonstrates the importance of the role of the administrative judiciary in creating a balance between the requirements of these circumstances while preserving individual rights and interests as much as possible and preventing the administration from abusing its power. This is what we will demonstrate in the following sections. In the first section, we will address the theory of exceptional circumstances, while in the second section, we will devote it to judicial oversight of the pillars of the Police decision in exceptional circumstances. In the third section, we will address the mechanism for creating a balance in exceptional circumstances.

### The Theory of Exceptional Circumstances

The purpose of defining the theory of exceptional circumstances is to prevent Administrative Police authorities from using this theory as a pretext for violating the law and infringing on personal rights and interests, and to attempt to restrict and limit the negative effects of this theory on the state of legitimacy<sup>29</sup>

Exceptional circumstances mean: "A group of sudden and unexpected real situations that lead to the suspension of the implementation of the legal rules applied by the administration under normal circumstances, in order to apply the special rules of legitimacy to crises or exceptional circumstances, and it is left to the judge to state the requirements of this special legitimacy<sup>30</sup>. Or it is: "temporarily liberating the administration from the rules of legitimacy to the extent that it enables it to perform its duties"<sup>31</sup>.

Exceptional circumstances mean temporary liberation from the restrictions of the principle of legitimacy by the administration to protect public order, which cannot be protected according to ordinary legal rules due to the existence of an exceptional crisis affecting the entity of the state.

The purpose of the theory of exceptional circumstances lies in achieving two basic goals: protecting public order and ensuring the continuity of public utilities, by adapting the legal rules in accordance with the existing exceptional situation. Applying the theory of exceptional circumstances grants the administration broad powers, and these powers may lead to restrictions on public freedoms and infringement of private interests, such as the administration resorting to imposing compulsory residence or administrative inspection.<sup>32</sup>

The commitment of Administrative Police authorities to legal texts, regardless of the circumstances and at all times, based on the principle of legality, is self-evident in normal circumstances, but it is difficult to apply in exceptional circumstances such as disasters and wars. These circumstances require speed in confronting them to avert dangers and maintain public order. Therefore, the literal application of the law will not help Administrative Police authorities<sup>33</sup>

French jurisprudence has stated: "The traditional, liberal concept subjects the Police authority to the principle of legality. On this basis, the Council of State established a judicial theory based on the balance between freedom and authority. However, sometimes this balance shifts in favor of the principle of authority in exceptional circumstances."<sup>(5)</sup>

The Egyptian Supreme Administrative Court also indicated in a ruling that stated: "Legislative texts were drawn up to govern normal circumstances. If exceptional circumstances arise and the administration is forced to apply normal texts, this leads to undesirable results that conflict with the intention of the drafters of those normal texts. Laws stipulate the procedures to be taken in normal circumstances, and as long as they do not contain a provision specifying what must be made in the event of urgent danger, the administrative authority must be empowered to take decisive measures that serve only the public interest<sup>34</sup>.

<sup>29</sup> Alian Bouzian, *The State of Legitimacy Between Theory and Practice*, Dar Al-Jamia Al-Jadida, Cairo, 2009, p. 364

<sup>30</sup> Dr. Sahnegh R. Dawood Muhammad, *Administrative Police for Environmental Protection*, Dar Al-Kotob Al-Qanuniyah, Cairo, 2012, p. 309.

<sup>31</sup> Dr. Suleiman Muhammad Al-Tamawi, *Principles of Administrative Law*, Dar Al-Fikr Al-Arabi, Cairo, 2007, p. 821.

<sup>32</sup> Nadine Poulet-Gibot Leclerc, *Administrative Law: Sources, Means, Controls*, 3rd Edition, First Editions, 2007, p. 97. Bourjol Maurice, "Administrative Law, Administrative Action", Mason et Cie, (5) Editor, Paris, 1972, p. 275

<sup>33</sup> Sami Gamal El-Din, *Administrative Judiciary, Supervision of Administrative Actions*, Manshaat Al-Maaref, Alexandria, 2003, p. 232.

<sup>34</sup> Ruling of the Supreme Administrative Court dated 4/14/1964, Ammar Jabbar Alwan, *The Legitimacy of Administrative Penalties in the Field of Administrative Control*, Master's Thesis submitted to the College of Law and Political Science, University of Iraq, Baghdad, 2022, p. 70.

The adherence of Administrative Police authorities to the principle of legality in normal circumstances is a guarantee that private rights and interests are not infringed upon. However, in exceptional circumstances, control authorities are granted broad powers that may exceed legal restrictions, as the priority is to protect public order.

Administrative seizure authorities enjoy broad powers in exceptional circumstances that differ from those they enjoy in normal circumstances. They are relieved of the restrictions imposed in normal circumstances with the permission of the administrative judge and are subject to a legitimacy specific to exceptional circumstances<sup>35</sup>

The legal justification for the theory of exceptional circumstances is based on the French, Egyptian, and Iraqi constitutions<sup>36</sup>. The inclusion of this theory in the constitutions grants the measures taken by the administration in disasters and crises a legitimate framework, based on a clear constitutional basis. This does not mean exempting the administration from restrictions, as administrative authorities are bound when taking the necessary measures in exceptional circumstances by clear and precise constitutional controls, in addition to judicial oversight, to prevent their abuse of power under the pretext of exceptional circumstances. All of this works to strike a balance between the public interest, represented by protecting public order, while taking into account the rights and interests of individuals and granting them reassurance and clarity regarding the limits of the measures taken in such circumstances. This gives them confidence in the constitutional system and prevents the administration from being arbitrary and persisting in these measures. The inclusion of exceptional circumstances in the constitution is a constitutional affirmation of the state's submission to the principle of legitimacy, even in the most dire circumstances.

### Judicial Oversight of the Elements of the Arbitrary Decision in Exceptional Circumstances

We mentioned that under normal circumstances, the powers of the administrative judge expand to include all elements of the Police decision, but the limits of the administrative judge's control over the Police decision change in exceptional circumstances. If the rule is that the Police authorities may not take measures outside the limits of their jurisdiction, otherwise their actions would be tainted by a defect of jurisdiction, and they must also adhere to the rules of form and procedure established by law, otherwise their decision would be tainted by a defect of form, this rule cannot be taken absolutely, as in exceptional circumstances, something may arise in the administration that forces it to take measures outside the limits of its jurisdiction in order to confront those circumstances.

The existence of exceptional circumstances justifies the violation of the rules of jurisdiction by Administrative Police authorities. It also allows them to disregard formalities and procedures. Adherence to formalities hinders Administrative Police authorities from taking urgent measures. That is, the administration can ignore the rules related to jurisdiction, form, and procedures due to the requirements of exceptional circumstances. In exceptional circumstances, the judge does not examine the jurisdiction of the source of the Police decision, but rather is satisfied with examining the availability of the exceptional circumstance and the appropriateness of the measure taken. That is, oversight of the elements of jurisdiction, form, and procedure in the Police decision is limited to normal circumstances<sup>37</sup>.

In support of this, the French Administrative Court of Appeal, in a recent ruling numbered 23BX00836 dated March 29, 2025, rejected the appeal submitted to it. Among the legal justifications for its rejection was "the absence of a violation of the rights of defense because the danger was serious and direct, which justifies bypassing some formal procedures"<sup>38</sup>.

The purpose of the Police action under exceptional circumstances must be to achieve the public interest and maintain public order. The Administrative Police powers must aim to achieve the public interest when taking enforcement action, whether the public interest is defined by legal texts that the administration must adhere to or not. The administration assesses that interest with its discretionary power, provided that its procedures are subject to judicial oversight. If the administration intends to achieve other goals, such as achieving personal interests,

Where such Police decision is tainted by the defect of deviation of authority and must be annulled by the judiciary<sup>39</sup>. The Administrative Police procedures must aim to preserve public order and must be resorted to in cases of extreme necessity due to their infringement on the freedoms of individuals and must not be intended to achieve other purposes.

In support of this, the Egyptian Administrative Court ruled: "Arrest and residence restrictions procedures must not be resorted to except in cases of extreme necessity in which it is difficult to resort to normal procedures,

<sup>35</sup> Dr. Shaba Toma Mansour, Administrative Law, Book One, 1st ed., University of Baghdad, 1979, p. 178.

<sup>36</sup> Article 16 of the French Constitution of 1958, Article 154 of the Egyptian Constitution of 2014, and Article 61 of the Iraqi Constitution of 2005.

<sup>37</sup> Maqoud Masouda, The Balance between Administrative Control Powers and Public Freedoms under Exceptional Circumstances in Algeria, PhD thesis submitted to the Faculty of Law and Political Science, Mohamed Khider University, Biskra, 2017, pp. 257 and 260.

<sup>38</sup> Cour administrative d'appel de Bordeaux, 3e ch., March 25, 2025, no. 23BX00836, inédit au recueil Lebon, <https://www.legifrance.gouv.fr/ceta/id/CETATEXT000051380199?init=true&query=ances+exceptionnelles+d%27urgence&searchField=ALL&tab%20selection=cetat>. (Consulted on 29 March 2025).

<sup>39</sup> Karzan Sadr al-Din, The Role of Administrative Control Authorities in Restricting Public Freedoms, PhD thesis submitted to the College of Law, Tikrit University, 2019, p. 99.

due to the infringement on personal freedom, and that this must be to the extent necessary to maintain security, and not exceed that to other purposes<sup>40</sup>.

As for judicial oversight of the reason for the Police decision under exceptional circumstances, given the danger that administrative enforcement powers pose to private rights and interests under such circumstances, the administrative judiciary has attempted to expand its oversight of the reasons for Police decisions. After its oversight of the physical existence of facts in the Police decision under exceptional circumstances as a first stage of its oversight of the reason element, the judge moves to oversight of the legal characterization of those facts and then moves to oversight of the appropriateness of the Police decision after that, a modern trend of judicial oversight of the reason for the Police decision. This is due to the importance of oversight of appropriateness in protecting private rights and interests under exceptional circumstances. The judiciary monitors the suitability of the reason for the action taken, which is the highest degree of judicial oversight, as it is necessary to monitor the suitability of Police decisions under exceptional circumstances due to their danger and their infringement on the rights, interests, and freedoms of individuals. Therefore, it was necessary to impose complete oversight of the reason for the decision and its suitability to the action, and to prevent the administration from being arbitrary and misusing its broad powers granted to it under such circumstances<sup>41</sup>.

Based on this, we refer to the decision of the French Administrative Court of Appeal No. 24NC02624 dated March 11, 2025, which overturned the decision of the Administrative Court in Strasbourg, which ruled to overturn the decision of the Minister of the Interior to impose restrictions on the movement of a Russian citizen and oblige him to sign in daily at a police station on charges of belonging to a terrorist group and financing terrorism on French territory.

The Administrative Court of Appeal considered that the action taken by the Minister was justified, as the Administrative Police measures taken by the Minister to impose individual restrictions on a person believed to pose a serious threat to public security without the need for issuing a judicial ruling of conviction is a valid procedure to prevent the occurrence of terrorist acts, especially since the person concerned by the decision is accused of criminal terrorist gathering with the aim of preparing one or more crimes of assault against persons, financing a terrorist project, and fraud. France also faces a high terrorist threat in light of the Israeli-Palestinian conflict, which justifies taking strict security measures to protect public order. Therefore, the Court of Appeal deemed the governor's decision proportionate to the security threat and overturned the administrative court's decision.<sup>42</sup>

The decline in judicial oversight over some elements of the Police decision, namely jurisdiction, form, and procedures, under exceptional circumstances, while maintaining such oversight over the reason and purpose of the decision, reflects a change in the standards for balancing interests under exceptional circumstances. The flexibility of judicial oversight over some elements does not mean an absence of judicial oversight, as we find strict judicial oversight over other elements due to the danger posed by Police procedures under such circumstances to private rights and interests. Under the administrative judiciary's oversight of the reason, we find that it addresses oversight of the physical existence of facts and their legal characterization, and goes beyond that to oversight of suitability, which is considered one of the highest levels of judicial oversight. This indicates that the administrative judiciary has not abandoned its role in protecting private interests under exceptional circumstances, but rather is content to change the standards of such oversight to suit the nature of those circumstances. The existence of exceptional circumstances does not mean abandoning the principle of legitimacy, but rather that this principle is expanded to achieve a balance between the public interest in maintaining public security during crises and disasters while protecting private interests from the administration's arbitrary use of its exceptional powers, preserving those rights even in the most difficult times.

### Mechanism for Achieving Balance in Exceptional Circumstances

The expansion of Administrative Police powers under exceptional circumstances may lead to infringement on the freedoms and private interests of individuals in order to achieve the public interest represented by maintaining public order.

<sup>40</sup> The ruling of the Egyptian Administrative Court No. Q, 1427, dated December 13, 1977. Dr Ashraf Abdel Fattah Abu Al-Majd, *The Position of the Annulment Judge Regarding the Administration's Authority to Provide Reasons for Administrative Decisions*, 1st ed., United Arab Company, Cairo, 2008, p. 87.

<sup>41</sup> Dr. Ali Najib Hamza, *Administrative Control Powers in Exceptional Circumstances*, 1st ed., Arab Center for Publishing and Distribution, Cairo, 2017, pp. 44-48.

<sup>42</sup> CAA de Nancy, 4th chamber, March 11, 2025, No. 24NC02624, inédit au recueil Lebon, available on [https://www.legifrance.gouv.fr/ceta/id/CETATEXT000051328703?juridiction=CONSEIL%20ETAT&juridiction=COURS%20APPEL&juridiction=TRIBUNAL%20LE+contr%C3%B4le+administratif+a+pour+but+de+maintenir+l%E2%80%99ordre+public.&searchField=ALL&searchType=ALL&sortValue=DATE\\_DESC&tab\\_selection=date](https://www.legifrance.gouv.fr/ceta/id/CETATEXT000051328703?juridiction=CONSEIL%20ETAT&juridiction=COURS%20APPEL&juridiction=TRIBUNAL%20LE+contr%C3%B4le+administratif+a+pour+but+de+maintenir+l%E2%80%99ordre+public.&searchField=ALL&searchType=ALL&sortValue=DATE_DESC&tab_selection=date), consulted (on March 29, 2025).

The primary objective of Administrative Police authorities is to ensure that the application of the theory of exceptional circumstances without setting conditions for its application may lead to restricting the rights and freedoms of individuals and violating them, as the Administrative Police authorities have broad powers under such circumstances. The fact that the Administrative Police authorities remain immune from any restriction under exceptional circumstances leads to harming the interests of individuals and disrupting the balance between the public interest represented by maintaining public order under such difficult circumstances and the private interests of individuals, which raises a question about the mechanism followed by the administrative judiciary in this case for the purpose of addressing the resulting imbalance.

The French State Council has held that, in order to determine the authority of Police in specific circumstances, it must be noted that the powers of this Police are no more than restrictions on the freedoms of individuals, and that the starting point of our public law is the belief in the heritage of citizens' freedoms, and the belief that respect for human rights is the title of our successive republican constitutions, and that this matter has been established explicitly and implicitly. Every controversy within the scope of our public law, in order to be based on a firm foundation of general principles, must be believed in advance that freedom is the origin and the restrictions Police it are the exception<sup>43</sup>

The French State Council confirmed through its ruling above that freedom is the origin and the restrictions imposed by public authorities are an exception that may not be expanded upon. Therefore, the powers of Administrative Police must be restricted under exceptional circumstances with conditions to prevent them from abusing power and harming the interests of individuals under the pretext of maintaining public order.

The expansion of Administrative Police powers in exceptional circumstances does not mean that they can resort to applying the theory unconditionally or protecting it from judicial oversight, given the importance of such oversight as a refuge for those harmed by exceptional administrative actions. Therefore, conditions have been established that must be met to apply the theory of exceptional circumstances as a guaranteed protection for the rights and interests of individuals. The application of the theory of exceptional circumstances is not resorted to solely at the desire of the administration, as this may lead to infringement on the freedoms and rights of individuals<sup>44</sup>.

Even under exceptional circumstances, judicial oversight remains in place, whether in terms of the existence of the circumstances that justified granting the administration exceptional powers or in terms of the content of the measures taken under those circumstances. The French State Council exercised strict oversight over exceptional circumstances, whether temporal or spatial.

This led to the expansion of the powers of administrative authorities due to their inability to confront these circumstances in accordance with ordinary laws, which justifies the adoption of exceptional measures to address them<sup>45</sup>.

The criterion of legitimacy under exceptional circumstances is not the extent to which the procedures issued by the administration conform to the law, but rather the extent to which those procedures conform to the established controls. This prompted the judiciary to establish controls and restrictions on the powers of Administrative Police in exceptional circumstances. In support of this, we cite the ruling of the Egyptian Supreme Administrative Court, which stated: "However, the government's authority in this area is undoubtedly not free from any restrictions, but is subject to principles and controls. A factual or legal situation must exist that calls for intervention, and the government's action must be necessary to confront this situation as the only means of confronting the situation. The government's pioneering role in this action must be to seek the public interest. Thus, such actions are subject to judicial oversight. However, the basis in this case is not based on verifying the legitimacy of the decision in terms of its conformity or non-conformity with the law, but rather on the availability or lack of the aforementioned controls.

Among the controls and restrictions that Administrative Police authorities must adhere to in exceptional circumstances is the presence of an unusual, serious, and unforeseeable danger that threatens public order. The Police measure must also be necessary to confront this exceptional circumstance. The French State Council, in its ruling No. 490691 dated January 16, 2024, overturned a decision by the urgent judge of the French Administrative Court in which he ruled to issue a transit permit to a French woman residing with her minor son in Gaza. The woman requested that the French state issue a consular transit permit for her and her son and evacuate her from the Gaza Strip due to the unstable security situation there. The French State Council deemed the consular transit permit not necessary for their exit from Gaza, and it is also useless, since departure depends on the approval of the Israeli and Egyptian authorities .

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<sup>43</sup> Adel Al-Saeed Muhammad, previous source, p. 497.

<sup>44</sup> Karzan Sadr Al-Din, previous source, p. 95.

<sup>45</sup> Nadine Poulet-Gibot Leclerc, *Administrative Law: Sources, Means, Controls*, Ibid., p. 98. (2) Ruling of the Egyptian Supreme Administrative Court on 4/14/1962, Qarf Jamal, previous source, p. 55.

Furthermore, the administration's goal when resorting to exceptional measures must be to protect public order in all its elements, and it must adhere to exercising its powers within the limits of the period of exceptional circumstances and not exceed that.

The administrative procedures must be appropriate to the circumstances, and they must not abuse their rights, and this is subject to judicial oversight.<sup>46</sup>

Judicial oversight of Administrative Police is one of the strongest guarantees for preserving the principle of legality, as Administrative Police bodies must adhere to the controls and conditions set forth in exceptional circumstances and must adhere to the limits of the law in their actions to protect private rights and interests. These powers are not freed from the restrictions imposed by legal texts except within the limits of exceptional circumstances for the purpose of taking the necessary measures to confront that circumstance. The constitutional legislator was concerned with regulating exceptional circumstances and defining the powers taken by codifying them, while establishing the necessary guarantees to protect the interests of individuals<sup>47</sup>, in addition to the administrative judiciary's oversight of the actions issued by the administrative authorities and monitoring the extent of their necessity for the existing exceptional circumstance<sup>48</sup>

A balance between interests under exceptional circumstances cannot be achieved by giving the administration unconditional freedom, nor can it be achieved by restricting it completely. Rather, a flexible equation must be applied based on assessing the necessities imposed by reality under exceptional circumstances, along with the legal and constitutional guarantees established to protect interests and rights. Expanding the administration's powers under exceptional circumstances does not mean denying the law, but rather restructuring it in accordance with reality, without denying the importance of judicial oversight so that this exception does not turn into an arbitrary situation that harms the rights and interests of individuals.

## CONCLUSION

At the conclusion of this study—based on judicial rulings and legal analysis—the essential role of the administrative judiciary becomes evident in maintaining a balance between the powers granted to the administration in the field of administrative police and the rights and interests of individuals. While the administrative authority is entrusted with preserving public order, this task must not justify the erosion of fundamental rights. The following are the key findings and recommendations derived from the research.

## FINDINGS

1. The administrative judiciary of the French Council of State played a pivotal role in defining the scope of public order and in establishing judicial oversight over administrative police measures.
2. The application of the theory of exceptional circumstances does not exempt the administration from judicial scrutiny. On the contrary, such scrutiny remains essential—albeit within the framework of flexible legality—due to the severity of the situation, without neglecting the need to respect individual rights and freedoms.
3. The administrative judiciary in the compared systems plays a crucial role in protecting individual interests while preserving the public interest. It contributes to achieving a balance between conflicting interests through legal principles such as legality, necessity, and proportionality.
4. The administrative judge exercises advanced forms of oversight, not only through reviewing the legality of administrative actions but also by evaluating the legal qualification of facts and their suitability in ensuring the protection of individual rights.

## RECOMMENDATIONS

1. In view of the broad and ambiguous nature of the concept of public order, it is necessary for the legislator to provide a clear legal definition. This would prevent the misuse of administrative powers under the pretext of exceptional circumstances and safeguard against unjustified restrictions on individual rights.
2. Decisions issued within the framework of administrative police powers, particularly during exceptional circumstances, must be grounded in the principles of necessity and proportionality.

<sup>46</sup> Dr. Ali Najib Hamza, previous source, p. 167.

<sup>47</sup> Ruqaya Adil, Shaimaa Jasim Toman, and Aymen Abdulaali, The Importance of Swearing-In for Taking a Seat as a Member of the House of Representative in Iraq, *Journal of Legal, Ethical and Regulatory Issues*, Allied Business Academies, Vol. 24, Special Issue 1, 2021, p. 5. Available at: <https://www.researchgate.net/publication/353885995>.

<sup>48</sup> . Faisal Jabr Abbas, previous source, p. 155.



3. Legislative efforts should aim to codify the rules governing administrative police powers in times of exception. This includes defining the conditions under which the theory of exceptional circumstances may apply, the procedural guarantees afforded, the scope of these exceptional situations, and the boundaries that must not be crossed, in order to limit potential administrative abuse and ensure the protection of individual interests.

4. In order to uphold a fair balance between public and private interests, the administrative judiciary should continue to develop clear and consistent jurisprudence that defines the limits, conditions, and legal standards of the public interest. This would help guide the administration in exercising its powers without infringing upon individual freedoms under the justification of serving public needs.

5. The establishment of specialized administrative judicial bodies for cases involving administrative police matters would enhance judicial expertise in this field, allow for more precise legal reasoning, and promote the development of consistent judicial guidelines. This specialization would contribute significantly to achieving a more refined and just balance between administrative authority and individual rights.

## REFERENCES

- The Iraqi Constitution of 2005.  
Iraqi Mental Health Act. No. 1 of 2005.  
The French Constitution of 1958  
The Egyptian Constitution of 2014  
Ashraf Ibrahim Suleiman, *Investigations and Judicial Oversight in Comparative Systems*, 1st ed., National Center for Legal Publications, Cairo, 2015  
Ashraf Abdel Fattah Abu Al-Majd, *The Position of the Annulment Judge Regarding the Administration's Authority to Provide Reasons for Administrative Decisions*, 1st ed., United Arab Company, Cairo, 2008.  
Boukritt Omar, *Judicial Oversight of Administrative Police Measures*, Master's Thesis submitted to the Faculty of Law and Political Science, University of Mentouri, Constantine, Algeria, 2007.  
Khaled Al-Zubaidi, *Negative Administrative Decision in Jurisprudence and Judiciary*, Journal of Law, University of Kuwait, Issue 30, September 2006.  
Dr. Ammar Boudiaf, *A Brief Introduction to Administrative Law*, Dar Rayhana, Algeria, no year of publication.  
Dr. Youssef Nasser Muhammad, *Administrative Police and the Limits of Its Powers in Normal and Exceptional Circumstances*, a study published in the Journal of Legal and Economic Research, Issue 74, 2020.  
Dr. Sami Gamal El-Din, *Appropriateness Judiciary and the Discretionary Power of the Administration*, Dar Al-Nahda Al-Arabiya, Cairo, 1992.  
Dr. Suleiman Muhammad Al-Tamawi, *Principles of Administrative Law*, Dar Al-Fikr Al-Arabi, Cairo, 2007.  
Dr. Sahnakar Dawood Muhammad, *Administrative Police for Environmental Protection*, Dar Al-Kotob Al-Qanuniyah, Cairo, 2012.  
Dr. Shaba Toma Mansour, *Administrative Law, Book One*, 1st ed., University of Baghdad, 1979.  
Dr. Adel Al-Saeed Muhammad, *Administrative Police*, 1st ed., Dar Al-Fikr Al-Jami'i, Alexandria, 2008  
Dr. Ali Naguib Hamza, *Administrative Police Powers in Exceptional Circumstances*, 1st ed., Arab Center for Publishing and Distribution, Cairo, 2017  
Dr. Muhammad Abd al-Hamid Masoud, *Problems of Judicial Oversight of the Legitimacy of Administrative Police Decisions*, 1st ed., no publisher or place of publication, 2007.  
Sami Gamal al-Din, *Administrative Judiciary, Oversight of Administrative Actions*, Manshaat al-Maaref, Alexandria, 2003.  
Shamir Mahmoud Sabry, *The Legitimacy of Special Administrative Police to Protect Public Security*, Arab Center for Publishing and Distribution, 1st ed., Cairo, 2018  
Abd al-Ghani Bassiouni, *Administrative Judiciary, Annulment Judiciary*, Manshaat al-Maaref, Alexandria, 1997  
Alian Bouzian, *The State of Legitimacy between Theory and Practice*, Dar Al-Jami'a Al-Jadida, Cairo, 2009.  
Ammar Jabbar Alwan, *The Legitimacy of Administrative Penalties in the Field of Administrative Police*, Master's Thesis submitted to the College of Law and Political Science, University of Al-Iraqiya, Baghdad, 2022.  
Faisal Jabr Abbas, *Administrative Police in the Scope of Public Health in Iraq*, Master's Thesis submitted to the College of Law and Political Science, University of Al-Iraqiya, 2019.  
Qarf Jamal, *Judicial Oversight of Administrative Police Acts*, Master's Thesis submitted to the College of Law, University of Badji Mokhtar, Algeria, 2006.  
Ruqaya Adil, Shaimaa Jasim Toman, and Aymen Abdulaali, *The Importance of Swearing-In for Taking a Seat as a Member of the House of Representative in Iraq*, Journal of Legal, Ethical and Regulatory Issues, Allied Business Academies, Vol. 24, Special Issue 1, 2021, p. 5. Available at: <https://www.researchgate.net/publication/353885995>

- Karzan Sadr Al-Din, *The Role of Administrative Police Authorities in Restricting Public Freedoms*, PhD Thesis submitted to the College of Law, University of Tikrit, 2019
- Kawah Yassin Salim, *The Role of the Administrative Judiciary in Protecting Public Rights and Freedoms*, Dar Al-Jamia Al-Jadida, Alexandria, 2016.
- Muhammad Al-Saghir, *The Administrative Judiciary / The Cancellation Suit*, Dar Al-Ulum for Publishing and Distribution, Algeria, 2004.
- Mahmoud Saad Al-Din Sharif, *The Body Responsible for Issuing Police Regulations and the Restrictions It Is Subject to in This Regard*, State Council Journal, Egyptian Universities Publishing House, Egypt, 3, 1952.
- Maqduf Masouda, *The Balance between the Powers of Administrative Police and Public Freedoms under Exceptional Circumstances in Algeria*, PhD Thesis Submitted to the Faculty of Law and Political Science, University of Muhammad Khider, Biskra, 2017.
- Hashem Abdel Raouf Bassiouni, *The Theory of Administrative Police Conditions in Contemporary Positive Systems and Islamic Law*, Dar Al-Fikr Al-Jami'i, Cairo, 1st ed., 2007.
- Bourjol Maurice, "droit administratif, l'action administrative", masson et cie, éditeur, paris, 1972.
- CAA de Nancy, 3ème chambre, 27 mars 2025, n° 23NC03556, inédit au recueil Lebon, [https://www.legifrance.gouv.fr/ceta/id/CETATEXT000051408926?dateDecision=&init=true&page=1&query=Qualification+juridique+des+faits&searchField=ALL&tab\\_selection=cetat](https://www.legifrance.gouv.fr/ceta/id/CETATEXT000051408926?dateDecision=&init=true&page=1&query=Qualification+juridique+des+faits&searchField=ALL&tab_selection=cetat).
- CAA de Nancy, 4ème chambre, 11 mars 2025, n° 24NC02624, inédit au recueil Lebon, disponible sur, [https://www.legifrance.gouv.fr/ceta/id/CETATEXT000051328703?jurisdiction=CONSEIL\\_ETAT&jurisdiction=COURS\\_APPEL&jurisdiction=TRIBUNAL\\_CONFLIT&page=1&pageSize=10&query=Le+contr%C3%B4le+administratif+a+pour+but+de+maintenir+l%E2%80%99ordre+public.&searchField=ALL&searchType=ALL&sortValue=DATE\\_DESC&tab\\_selection=cetat](https://www.legifrance.gouv.fr/ceta/id/CETATEXT000051328703?jurisdiction=CONSEIL_ETAT&jurisdiction=COURS_APPEL&jurisdiction=TRIBUNAL_CONFLIT&page=1&pageSize=10&query=Le+contr%C3%B4le+administratif+a+pour+but+de+maintenir+l%E2%80%99ordre+public.&searchField=ALL&searchType=ALL&sortValue=DATE_DESC&tab_selection=cetat).
- Conseil d'État, 3 / 5 SSR, 3 nov. 1989, n° 71422, mentionné aux tables du recueil Lebon, disponible sur : Legifrance [https://www.legifrance.gouv.fr/ceta/id/CETATEXT000007764814?dateDecision=&init=true&page=1&query=China+town+&searchField=ALL&tab\\_selection=cetat](https://www.legifrance.gouv.fr/ceta/id/CETATEXT000007764814?dateDecision=&init=true&page=1&query=China+town+&searchField=ALL&tab_selection=cetat).
- Conseil d'État, ass., 27 oct. 1995, n° 136727, publié au recueil Lebon, disponible sur: Legifrance. [https://conseil-etat.fr/fr/arianeweb/CE/decision/1995-10-27/136727?utm\\_source=chatgpt.com](https://conseil-etat.fr/fr/arianeweb/CE/decision/1995-10-27/136727?utm_source=chatgpt.com).
- Conseil d'État, ord. réf., 16 janv. 2024, n° 490691, ECLI:FR:CEORD:2024:490691.20240116, inédit au recueil Lebon, [https://www.legifrance.gouv.fr/ceta/id/CETATEXT000048968267?dateDecision=&init=true&page=1&query=th%C3%A9orie+des+circonstances+exceptionnelles&searchField=ALL&tab\\_selection=cetat](https://www.legifrance.gouv.fr/ceta/id/CETATEXT000048968267?dateDecision=&init=true&page=1&query=th%C3%A9orie+des+circonstances+exceptionnelles&searchField=ALL&tab_selection=cetat). consulté le (1er avril 2025).
- Cour administrative d'appel de Bordeaux, 3e ch., 25 mars 2025, n° 23BX00836, inédit au recueil Lebon, [https://www.legifrance.gouv.fr/ceta/id/CETATEXT000051380199?init=true&query=Circonstances+exceptionnelles+d%27urgence&searchField=ALL&tab\\_selection=cetat](https://www.legifrance.gouv.fr/ceta/id/CETATEXT000051380199?init=true&query=Circonstances+exceptionnelles+d%27urgence&searchField=ALL&tab_selection=cetat).
- (1) . Ty Price Dooley, *The Undelivered Dream: Policing, Administrative Rules and Social Equity*, Administrative Theory & Praxis, vol. 43, no. 4, 2021, P 294, indexed in Scopus: <https://www.scopus.com/sourceid/21100887531>. DOI: 10.1080/10841806.2021.1959166 (<http://dx.doi.org/10.1080/10841806.2021.1959166>).
- Nadine Poulet-Gibot Leclerc, *Droit administratif: Sources, moyens, contrôles*, 3<sup>e</sup> édition, Bréal éditions, année de publication 2007.
- Federal Supreme Court Decision No. 3/Federal Cassation 2006 dated March 29, 2006.
- Supreme Administrative Court Decision No. 1411/Administrative Judiciary/Cassation/2018 dated February 13, 2020, published in the Collection of State Council Decisions and Fatwas for the year 2020.
- Administrative Judiciary Court Decision No. 2024/6328 dated November 13, 2024 (unpublished).
- Administrative Judiciary Court Decision No. 81 Administrative Judiciary dated January 18, 2006.
- Supreme Administrative Court Ruling No. 648/Administrative Judiciary/Cassation/2021 dated January 19, 2022. Published in the Collection of State Council Decisions and Fatwas for the year 2022
- Ruling of the Egyptian Supreme Administrative Court on 4/14/1962, Qarf Jamal, previous source, p. 55
- Ruling of the Egyptian Administrative Court 182, Case No. 24796 of 57 Q, on 4/13/2004,
- Ruling of the Egyptian Administrative Court issued on 2/24/2009 in Case No. 3289 of 56 Q, Ninth Circuit
- Ruling of the Egyptian Administrative Court No. 657 of 6/16/1949,
- Ruling of the Egyptian Administrative Court No. 1427, of 12/13/1977.
- Ruling of the Egyptian Administrative Court of 6/9/2009 in Case No. 8507 of 1963.